

★ FEB 28 2006 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----X
MARIUS SORBELLO,ORDER

Petitioner,

06 CV 948 (JG)

-against-

PAUL M. LAIRD, Warden,

Respondent.

-----X
CHARLES NORTHEIMER,

Petitioner,

06 CV 2081 (JG)

-against-

PAUL M. LAIRD, Warden,

Respondent.

-----X
ANTHONY SPENCER,

Petitioner,

06 CV 2181 (JG)

-against-

PAUL M. LAIRD, Warden,

Respondent.

-----X
JASON WITTLIN,

Petitioner,

06 CV 6373 (JG)

-against-

PAUL M. LAIRD, Warden,

Respondent.

-----X

-----X
LUIS OSCAR SANTIAGO, :
: Petitioner, :
: :
-against- : 06 CV 6374 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
TREVOR DILLARD, :
: Petitioner, :
: :
-against- : 06 CV 6610 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
STANLEY E. MOISE, :
: Petitioner, :
: :
-against- : 06 CV 6611 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
MICHAEL PHILBIN, :
: Petitioner, :
: :
-against- : 06 CV 6612 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X

-----X
JOSEPH LUPARELLA, :
: Petitioner, :
: :
-against- : 06 CV 6619 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
ROBERT SULLIVAN, :
: Petitioner, :
: :
-against- : 06 CV 6620 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
COREY JERMAINE PRATT, :
: Petitioner, :
: :
-against- : 06 CV 6690 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
ANDREW SWAAP, :
: Petitioner, :
: :
-against- : 06 CV 6753 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X

-----X
JACKIE EDWARD TAYLOR, :
Petitioner, :
-against- : 06 CV 6761 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
JESUS DESOTO, :
Petitioner, :
-against- : 06 CV 6817 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
CHRISTIAN ALEXANDRE LUGO, :
Petitioner, :
-against- : 06 CV 6820 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
JOSEPH CORROPOLESE, :
Petitioner, :
-against- : 06 CV 6862 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X

-----X
WALEED SALEH, :
: Petitioner, :
: -against- : 06 CV 6864 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
ADRIAN CHINN, :
: Petitioner, :
: -against- : 07 CV 061 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
DAREN BLACKWELL, :
: Petitioner, :
: -against- : 07 CV 170 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
RICHARD BOND, :
: Petitioner, :
: -against- : 07 CV 172 (JG)
: :
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X

-----X
RANDY ROERO, :
: Petitioner, :
: -against- : 07 CV 175 (JG)
: PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
JAMES HICKS, :
: Petitioner, :
: -against- : 07 CV 236 (JG)
: PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
PETER WARD, :
: Petitioner, :
: -against- : 07 CV 243 (JG)
: PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
LASHAWN BROWN, :
: Petitioner, :
: -against- : 07 CV 328 (JG)
: PAUL M. LAIRD, Warden, :
: Respondent. :
-----X

-----X
DIRICK LAGREMM REESE, :
: Petitioner, :
: -against- : 07 CV 367 (JG)
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
JOSEPH MARTIN, : Petitioner, :
: -against- : 07 CV 368 (JG)
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
DAMAR CURRIE, : Petitioner, :
: -against- : 07 CV 369 (JG)
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X
CHRISTOPHER MARC GAGNON, : Petitioner, :
: -against- : 07 CV 370 (JG)
PAUL M. LAIRD, Warden, :
: Respondent. :
-----X

KEITH CLEVELAND, :
Petitioner, :
-against- : 07 CV 439 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
SHA-MAR EAVES :
Petitioner, :
-against- : 07 CV 440 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
LARRY MURDOCK, :
Petitioner, :
-against- : 07 CV 455 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
GREG EBERSOLE, :
Petitioner, :
-against- : 07 CV 486 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
X

-----X
CHRISTOPHER BROWN, :
Petitioner, :
-against- : 07 CV 487 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
DANIEL COURCHESNE, :
Petitioner, :
-against- : 07 CV 488 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
ALBERT FRANCO, :
Petitioner, :
-against- : 07 CV 490 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
EDWIN SANJINES, :
Petitioner, :
-against- : 07 CV 496 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X

-----X
MARK DAVIS, :
Petitioner, :
-against- : 07 CV 546 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
SILVIO HURTADO, :
Petitioner, :
-against- : 07 CV 547 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X
LANCE CARSELLO, :
Petitioner, :
-against- : 07 CV 755 (JG)
PAUL M. LAIRD, Warden, :
Respondent. :
-----X

JOHN GLEESON, United States District Judge:

This Order addresses the effect of the memorandum and order I entered today in lead case *Sorbello v. Laird*, 06 CV 948, ("the *Sorbello* order") upon the above-captioned cases. As set forth in more detail below, this Order (A) disposes of the consolidated petitions as to which the government has already shown cause; (B) directs the government to show cause why the remaining consolidated petitions should not be granted or dismissed as moot; and (C) consolidates several further petitions and directs the government to show cause why they should

not be granted or dismissed as moot.

A. *Disposition of Consolidated Petitions to Which the Government Has Responded*

As discussed in the *Sorbello* order, petitioners in these related cases ask that I direct the Metropolitan Detention Center in Brooklyn (“MDC Brooklyn”) to, in good faith, designate them for transfer to a Community Corrections Center (“CCC,” now known as a Residential Re-entry Center) in accordance with *Levine v. Apker*, 455 F.3d 71 (2d Cir. 2006) and Federal Bureau of Prisons Program Statement 7310.04 (Dec. 16, 1998) (“Program Statement”), but not 28 C.F.R. § 570.21. In its response to *Sorbello*’s petition, the government included responses to the petitions of Dillard, Luparella, Moise, Northeimer, Philbin, Pratt, Santiago, Spencer, Sullivan, Swaap, Taylor, and Wittlin.

From the government’s representations, *see* Declaration of Jennifer Dannels, Jan. 18, 2007 (“Dannels Decl.”), it appears that several petitioners’ applications for relief are moot because the MDC has already formulated a CCC transfer plan for those petitioners. I credit the government’s representations, and therefore dismiss the following petitions as moot:

- Dillard: recommended for transfer beginning March 19, 2007. Dannels Decl. ¶ 30.
- Moise: recommended for transfer beginning April 2, 2007. *Id.* ¶ 35.
- Northeimer: recommended for transfer beginning April 2, 2007. *Id.* ¶ 11.
- Philbin: recommended for transfer beginning March 26, 2007. *Id.* ¶ 40.
- Santiago: recommended for transfer beginning May 7, 2007. *Id.* ¶ 25.
- Spencer: recommended for transfer beginning June 18, 2007. *Id.* ¶ 16.
- Taylor: recommended for transfer beginning August 21, 2007. *Id.* ¶ 61.

The Clerk is respectfully directed to close these cases.

As for the remaining petitions to which the government responded -- those of Luparella, Pratt, Sullivan, Swaap, and Wittlin -- the government's representations indicate that the MDC has not yet designated them for CCC placement. *See* Dannels Decl. ¶ 45 (Luparella); *id.* ¶ 53 (Pratt); *id.* ¶ 49 (Sullivan); *id.* ¶ 57 (Swaap); *id.* ¶ 21 (Wittlin). Those petitions are therefore not moot. In MDC Brooklyn's stipulation of settlement in Sorbello's case, however, which I "so ordered" in the *Sorbello* order, the government agrees to grant these petitions the relief they seek.

The stipulation specifically provides that, because petitioners Pratt, Sullivan, Swaap, and Wittlin "are within 11 to 13 months of their projected release date," MDC Brooklyn will "determine a final and specific release preparation plan" for those petitioners, in accordance with the Program Statement, "by March 9, 2007." *See* Stipulation of Settlement ¶ 2, Feb. 23, 2007. Luparella, while not specifically provided for in the stipulation because his projected release date is September 4, 2008, *see* Dannels Decl. ¶ 43, nevertheless achieves the relief he seeks pursuant to the stipulation's general provision that MDC Brooklyn

shall, in referring an inmate for community confinement in a Residential Reentry Center (RRC) (formerly known as a community corrections center), and until the Bureau of Prisons establishes a policy to the contrary, or until there is a change in the applicable law, in good faith:

(A) consider the factors set forth in 18 U.S.C. § 3621(b), without reference to 28 C.F.R. § 570.21 as required by *Levine v. Apker*, 455 F.3d 71 (2d Cir. 2006), and

(B) follow the Federal Bureau of Prisons Program Statement 7310.04 (Dec. 16, 1998), and thus to the extent practicable, establish a final and specific release preparation plan at a team meeting no later than 11 to 13 months before an inmate's projected release date.

Stipulation of Settlement ¶ 1, Feb. 23, 2007.

In sum, because MDC Brooklyn has stipulated to afford Luparella, Pratt, Sullivan, Swaap, and Wittlin the relief to which they are entitled, the Clerk is respectfully directed to close their cases.

B. *Consolidated Petitions to Which the Government Has Not Yet Responded*

The government has not yet been ordered to show cause why the remaining consolidated petitions should not be granted. I now direct the government to do so in a consolidated response, to be filed on or before March 7, 2007, to the petitions of Desoto, Lugo, Corropolese, Saleh, Chinn, Blackwell, Bond, Rosero, Hicks, Ward, Brown, Reese, Martin, Currie, Gagnon, Cleveland, Eaves, and Murdock. Where appropriate, the government shall indicate in its response whether a final and specific release preparation plan for a petitioner has already been determined, or, if not, whether the petition in question is covered by the general provision of the stipulation of settlement in Sorbello's case.

Service of a copy of this Order, together with a copy of the petitions, shall be made by the Clerk via electronic case filing to the United States Attorney.

C. *Petitions That Have Not Yet Been Consolidated*

The petitions of Greg Ebersole, Christopher Brown, Daniel Courchesne, Albert Franco, Edwin Sanjines, Mark Davis, Silvio Hurtado, and Lance Carsello have not yet been consolidated. As they appear to present legal issues identical to lead case *Sorbello v. Laird*, 06 CV 948, I respectfully direct the Clerk to consolidate those remaining petitions into that lead case. The petitioners are granted leave to proceed without being required to prepay fees or costs, or give security therefore.

I direct the government address in its consolidated response -- to be filed on or

before March 7, 2007 -- the petitions of Ebersole, Brown, Courchesne, Franco, Sanjines, Davis, Hurtado, and Carsello. Where appropriate, the government shall indicate in its response whether a final and specific release preparation plan for a petitioner has already been determined, or, if not, whether the petition in question is covered by the general provision of the stipulation of settlement in Sorbello's case.

In addressing the merits of these newly consolidated petitions, I am inclined to rely upon the memoranda of law submitted by appointed counsel for petitioner in the lead case and counsel's statements at oral argument, which was held on February 6, 2007. Petitioners may, if they choose, submit additional memoranda in support of their own petitions. Such memoranda are not necessary, but I will of course consider them if petitioners choose to submit them.

Service of a copy of this Order, together with a copy of the petitions, shall be made by the Clerk via electronic case filing to the United States Attorney.

So ordered.

s/John Gleeson

John Gleeson, U.S.D.J.

Dated: Brooklyn, New York
February 28, 2007